

ORIGINAL**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX.
FT. WORTH DIVISION

2009 NOV 19 AM 9:51

CLERK OF COURT

AMERICAN AIRLINES, INC.,

Plaintiff,

-v.-

YAHOO! INC. and OVERTURE SERVICES, INC.
d/b/a YAHOO! SEARCH MARKETING,

Defendants.

No. 4:08-CV-626-A

RESPONSE TO THE COURT'S NOVEMBER 16, 2009 ORDER

On November 12, 2009, plaintiff, American Airlines, Inc. ("American"), filed its Motion for Leave to Supplement the Record in Support of American's Motion for Sanctions for Failure to Produce and Preserve Documents and Brief in Support (the "Motion to Supplement"). On November 16, 2009, defendants, Yahoo! Inc. and Overture Services, Inc. d/b/a Yahoo! Search Marketing (collectively, "Yahoo"), filed their response. On November 16, 2009, the Court rendered an Order denying American's Motion to Supplement and requiring American to file by 2:00 p.m. on November 19, 2009 a document that includes "full information concerning any conference that was held between counsel in advance of, and relative to, the filing of such motion for leave to supplement." (Order pg. 1-2). American respectfully provides the following in response to that order:

I.
DESCRIPTION OF THE CONFERENCE BETWEEN
COUNSEL RELATIVE TO THE FILING OF THE MOTION

American took the deposition of Yahoo employee Nam Nguyen on November 5, 2009. After that deposition, American decided that it would seek to supplement the record of its Motion for Sanctions for Failure to Produce and Preserve Documents with excerpts from Mr. Nguyen's deposition. Before filing the Motion to Supplement, counsel for American had two telephone conferences with counsel for Yahoo relating to the motion and exchanged three emails relating to the motion:

- Counsel for American informed counsel for Yahoo by telephone that it intended to supplement the record with excerpts from the deposition of Mr. Nguyen.
- Counsel for American provided the excerpts to counsel for Yahoo by email.
- Counsel for Yahoo responded by email seeking additional information.
- Counsel for American replied by email providing the requested information.
- Counsel for Yahoo by telephone explained to counsel for American that Yahoo would not oppose submission of the deposition excerpts, but would oppose any attempt by American to explain the meaning of the excerpts.

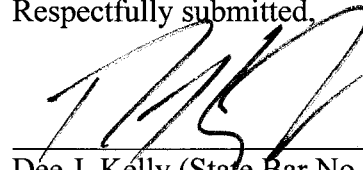
To make sense, Nguyen's deposition excerpts had to be placed in context and explained. Accordingly, American prepared a short brief putting into context and explaining Nguyen's testimony. American understood from its conferences with counsel for Yahoo that including such information would cause the Motion to Supplement to be opposed.

American pursued a thorough and complete meet-and-confer process with regard to its Motion to Supplement and understood that Yahoo opposed any supplementation that included explanation of Nguyen's testimony. Yahoo's November 16, 2009 response confirms that American's understanding was correct. Nevertheless, Yahoo asserts that American did not

properly meet and confer. The sole basis for this assertion is that Yahoo believes that Nguyen's testimony means something different than what American believes. That difference of interpretation is a clear dispute ripe for the Court to consider.

Dated: November 19, 2009

Respectfully submitted,



Dee J. Kelly (State Bar No. 11217000)
Dee J. Kelly, Jr. (State Bar No. 11217250)
Lars L. Berg (State Bar No. 00787072)
Scott R. Wiehle (State Bar No. 24043991)
KELLY HART & HALLMAN LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Phone: (817) 332-2500
Fax: (817) 878-9280

Attorneys for Plaintiff American Airlines, Inc.

Of Counsel:

Howard S. Hogan (admitted *pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Phone: (202) 955-8500
Fax: (202) 467-0539

Frederick Brown (admitted *pro hac vice*)
Jason B. Stavers (admitted *pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105
Phone: (415) 393-8200
Fax: (415) 393-8306

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing document has been served on all parties via facsimile on November 19, 2009.

David F. Chappell
Scott A. Fredricks
CANTEY HANGER LLP
600 West Sixth Street, Suite 300
Fort Worth, TX 76102

Michael A. Jacobs
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105



Dee J. Kelly, Jr.